



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA. 17120

ERNEST D. PREATE, JR.
ATTORNEY GENERAL

May 3, 1993

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FEDERAL COMMUNICATIONS COMMISSION
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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 22
Washington, D.C. 20554

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Re: CC Docket #93-22

Dear Ms. Searcy:

Enclosed please find an original and nine copies of the

CC 93-22

CERTIFICATE OF SERVICE

I hereby certify that I am causing to be served by first-class mail, postage prepaid, copies of the attached Reply Comments to parties listed on the official service list in the above proceeding.



Daniel Clearfield
Executive Deputy Attorney General
Office of Attorney General
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Harrisburg, PA 17120
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Date: May 3, 1993

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Policies and Rules Implementing
the Telephone Disclosure and Dispute
Resolution Act

: CC Docket No. 93-22
: RM - 7990

:
: RECEIVED
: MAY 4 1993
: FCC - MAIL ROOM

REPLY COMMENTS OF THE
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MAY 24 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I. Introduction.

The Commonwealth of Pennsylvania, Office of Attorney General, hereby submits these Reply Comments in response to the Comments submitted to the Federal Communications Commission regarding its Proposed Rulemaking to implement the Telephone Disclosure and Dispute Resolution Act (TDDRA).

II. Billing Collection - Carriers Should Be Required To Make Adjustments To Consumer Bills When Consumers Complain About Deceptive Or Unauthorized 900 Number Calls.

In their Comments, the Telecommunications Subcommittee Consumer Protection Committee, National Association of Attorneys General, (hereinafter "the States" or "NAAG") urged the FCC to establish in its rules that carriers were required to provide refunds or credits to customers when they make claims that the underlying 900 number service was deceptive or misleading or where calls were unauthorized. NAAG Comments at 11. This comment was in response to the FCC's proposed Rule §64.1511, which suggested that a carrier be required to "forgive pay-per-call charges or issue refunds" when, on its own motion or upon complaint, a carrier "determines" that a pay-per-call service was offered "in violation of federal law or the regulations that are either set forth in the this sub-part or prescribed by the Federal Trade Commission pursuant to Titles 2 or 3 of the TDDRA."

The States urged a broader standard on which credits or refunds could be authorized to include claims that the service was deceptive or misleading or otherwise in violation of state law, or where the call was unauthorized. The States urged this

modification because of its view that present practice provides credits generally when customers allege that they did not receive what they were promised or were otherwise deceived (thereby constituting a violation of state deceptive practices laws), where the service did not comply with the individual state rules and statutes regarding 900 number services, or where the service was unauthorized -- e.g., a minor child making a call without permission or knowledge of the parent. NAC Comments at 11-12

service, or simply don't know whether it could or not. NAAG FTC Comments at 23-24 and ftns. 13 and 15. Almost three quarters of the consumers surveyed in one state survey showed this fundamental misunderstanding or lack of understanding. Id. Therefore, if telephone companies are required to leave 900 number charges on a subscriber's bill, notwithstanding a complaint that the service was deceptive or misleading or that a call was unauthorized, there exists a substantial probability that many consumers will simply pay those charges to avoid any perceived threat of interruption of telephone service, even when the consumer sincerely believe that the charges are inappropriate.

This result is particularly unfair in light of the fact that other public opinion survey data in the record indicates that as many as one half of all consumers continue to misunderstand 900 number services and cannot accurately identify them as calls for which an extra charge will be assessed. See NAAG FTC Comments at 10, ftn. 5.

Accordingly, it is vital that the FCC clarify its rule to indicate that carriers can continue to provide credits to customers who complain about particular charges when the complaints fall into the general category of alleging that the service did not provide what was promised, was otherwise deceptive or misleading or when a bona fide claim is raised that the call was unauthorized.

Not only is this the present industry practice, but

several industry commentators support this view. For example, the Information Industry Association (IIA) stated that "where customers have been mislead by false advertising, victimized by poor transmission quality or charged for unauthorized calls, the charges should be forgiven." IIA Comments at 17 (emphasis supplied). Bell Atlantic also lent support to this position: "a consumer who complains about a pay-per-call service that is offered in violation of the law should not have to pay for that service and the provider of such a service should be required to refund the customers money." Bell Atlantic Comments at 7. In addition, commentators from the industry and regulatory commissions have pointed out that in many instances credits for the first claim of an unauthorized call are provided liberally; second or subsequent credits are granted with the agent having the option of imposing mandatory blocking. See California PSC Comments at 1-3; Southwestern Bell Comments at 9-10. While credits for calls claimed to be deceptive, misleading or not what was promised should not be limited to any specific number (since the fact that a person has made a claim that a 900 number is deceptive in the past does not provide any indication that future claims of such kind to different pay-per-call services are abusive) the approach articulated by the California PSC and some of the local exchange companies could be a useful approach to dealing with claims of unauthorized calls.

It may be that those commentators who proposed that "refunds" should only be granted to consumers if a pay-per-call

service has actually been adjudicated as in violation of federal law may have been reading the FCC Rule to require massive, across-the-board refunds of charges to all consumers when a service is deemed "in violation of law." The States' call for a more liberal credit policy is grounded on the assumption that credits will be requested on an individual basis by consumers for a particular service. Such a credit would mean, pursuant to the FTC Proposed Rules, that an individual would no longer have a 900 number pay-per-call charge showing on the carrier portion of their local telephone bill. Without a finding of a violation of law the information service provider would still have the option of pursuing collection through some kind of second collection effort.

If the rule contemplates across-the-board refunds initiated by carriers to all consumers who made a call to a particular 900 number, the FCC should articulate the precise basis on which a carrier would be required to come forward with such refunds, but it should also make clear either that the standard for granting individual credits or refunds is different, or that the rule does apply to such individual case-by-case adjustments.

III. Collect Pay-Per-Calls Should Be Banned.

Several commentators have protested the Commission's suggestion that all types of collect pay-per-calls should be effectively banned by prohibiting carriers from providing billing

collection or transmission for such calls. See, e.g., Comments of Amalgamated Megacorp at 7-9. They claim that these calls provide some type of useful service. Nothing could be further from the truth. Collect pay-per-calls are designed for only one purpose -- to circumvent the present consumer protections that exist for 900 number calls, including the ability of consumers to block such calls. These schemes also attempts to take advantage of the natural confusion that is created by customers who do not understand the nature of the "collect" call they receive the disclosures and may assume that they are dealing with a traditional collect call. In fact, one service provider provided a detailed narrative of the ways in which collect pay-per-calls are abusive to consumers and characterized these as "advantages" to the IPs. See Comments of Summit Telecommunications at 5.¹

There is no practical or legal reason why pay-per-call

submitted that it would be sufficient to require carriers to terminate billing and collection or transmission for such calls when, after investigation, they have identified the calls as a pay-per-call service. This can be done, as it is today, by investigating complaints from individual consumers or by state or federal law enforcement agencies.

IV. Conclusion

The Commonwealth of Pennsylvania, Office of Attorney General, respectfully requests that the FCC reject the comments of other parties in the manner described herein.

Dated: May 3, 1993

Respectfully submitted,

ERNEST D. PREATE, JR.
ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA

TELECOMMUNICATIONS
SUBCOMMITTEE, Vice-Chairperson
Consumer Protection Committee
National Attorneys
General Association

By:



DANIEL CLEARFIELD
Executive Deputy Attorney General
Commonwealth of Pennsylvania